

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL ANTHONY MORENO,
Plaintiff,

v.

I. PEREZ-PANTOJA,
Defendant.

Case No. [22-cv-02267-SVK](#)

ORDER OF SERVICE

Plaintiff, a California state prisoner proceeding *pro se*, has filed a civil rights complaint under 42 U.S.C. § 1983.¹ Dkt. No. 1 (“Complaint”). Plaintiff is granted leave to proceed in forma pauperis in a separate order.

For the reasons that follow, the Court orders service on defendant.

DISCUSSION

A. Legal Standard

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify any cognizable claims and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *See West v.*

¹ Plaintiff has consented to magistrate judge jurisdiction. Dkt. No. 4.

1 *Atkins*, 487 U.S. 42, 48 (1988).

2 B. Legal Claims

3 Plaintiff claims that Correctional Officer I. Perez-Pantoja (“defendant”) violated his First
4 Amendment rights by destroying Plaintiff’s property and failing to follow COVID-19 protocols
5 while searching Plaintiff’s cell in retaliation for Plaintiff’s filing an administrative grievance
6 against another prison official. Plaintiff also claims that defendant violated his Eighth
7 Amendment rights by not following the protocols, including not wearing a mask, during the
8 search, thus endangering Plaintiff’s health and safety. When liberally construed, these claims are
9 cognizable under 42 U.S.C. § 1983.

10 **CONCLUSION**

11 1. Defendants Correctional I. Perez-Pantoja shall be served at Salinas Valley State Prison.

12 Service shall proceed under the California Department of Corrections and Rehabilitation’s
13 (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance
14 with the program, the clerk is directed to serve on CDCR via email the following documents: the
15 Complaint, this Order, a CDCR Report of E-Service Waiver form, and a summons. The clerk also
16 shall serve a copy of this order on the plaintiff.

17 No later than 40 days after service of this order via email on CDCR, CDCR shall provide
18 the court a completed CDCR Report of E-Service Waiver advising the court which defendant(s)
19 listed in this order will be waiving service of process without the need for service by the United
20 States Marshal Service (USMS) and which defendant(s) decline to waive service or could not be
21 reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the
22 California Attorney General’s Office which, within 21 days, shall file with the court a waiver of
23 service of process for the defendant(s) who are waiving service.

24 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for each
25 defendant who has not waived service according to the CDCR Report of E-Service Waiver a
26 USM-205 Form. The clerk shall provide to the USMS the completed USM-205 forms and copies
27 of this order, the summons, and the operative complaint for service upon each defendant who has
28 not waived service. The clerk also shall provide to the USMS a copy of the CDCR Report of E-

1 Service Waiver.

2 2. The defendant **shall** file an answer in accordance with the Federal Rules of Civil
3 Procedure.

4 3. No later than **eighty-four (84) days** from the date this order is filed, defendant shall
5 file **one comprehensive motion for summary judgment or other dispositive motion** with
6 respect to the cognizable claims in the complaint. At that time, defendant shall also submit the
7 magistrate judge jurisdiction consent form. Any motion for summary judgment shall be supported
8 by adequate factual documentation and shall conform in all respects to Rule 56 of the Federal
9 Rules of Civil Procedure. A motion for summary judgment also must be accompanied by a *Rand*
10 notice so that plaintiff will have fair, timely and adequate notice of what is required of him in
11 order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012) (notice
12 requirement set out in *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), must be served
13 concurrently with motion for summary judgment). **Defendant is advised that summary**
14 **judgment cannot be granted, nor qualified immunity found, if material facts are in dispute.**
15 **If defendant is of the opinion that this case cannot be resolved by summary judgment, he**
16 **shall so inform the court prior to the date the summary judgment motion is due.**

17 4. Plaintiff's opposition to the dispositive motion shall be filed with the court and
18 served on defendant no later than **twenty-eight (28) days** from the date defendant's motion is
19 filed. Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and *Celotex*
20 *Corp. v. Catrett*, 477 U.S. 317 (1986) (holding party opposing summary judgment must come
21 forward with evidence showing triable issues of material fact on every essential element of his
22 claim).

23 5. Defendant shall file a reply brief no later than **fourteen (14) days** after plaintiff's
24 opposition is filed.

25 6. All communications by plaintiff with the court must be served on defendant, or
26 defendant's counsel, by mailing a true copy of the document to defendant or defendant's counsel.

27 7. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
28 No further court order under Federal Rule of Civil Procedure 30(a)(2) is required before the

1 parties may conduct discovery.

2 Plaintiff is reminded that state prisoners inmates may review all non-confidential material
3 in their medical and central files, pursuant to *In re Olson*, 37 Cal. App. 3d 783 (Cal. Ct. App.
4 1974); 15 California Code of Regulations § 3370; and the CDCR's Department Operations
5 Manual §§ 13030.4, 13030.16, 13030.16.1-13030.16.3, 13030.21, and 71010.11.1. Requests to
6 review these files or for copies of materials in them must be made directly to prison officials, not
7 to the court.

8 8. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
9 informed of any change of address by filing a separate paper with the clerk headed "Notice of
10 Change of Address." He also must comply with the court's orders in a timely fashion. Failure to
11 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
12 Civil Procedure 41(b).

13 **IT IS SO ORDERED.**

14 Dated: May 23, 2022

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18 SUSAN VAN KEULEN
19 United States Magistrate Judge
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